



ఆంధ్రప్రదేశ్ రాజ పత్రము
THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY

PART I EXTRAORDINARY

No.1085

AMARAVATI, WEDNESDAY, AUGUST 30, 2023

G.863

NOTIFICATIONS BY GOVERNMENT

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GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

General Administration Department- The Andhra Pradesh State and Subordinate Service Rules, 1996 - Relinquishment of Rights by Members of Service - Amendment to Rule 28 of the Andhra Pradesh State and Subordinate Service Rules, 1996 - Notification - Orders - Issued.

GENERAL ADMINISTRATION (SERVICES-D) DEPARTMENT

G.O.Ms.No.92.

Dated 28.08.2023.
Read the following:-

1. G.O.Ms.No.436, G.A. (Ser.D) Dept., dated 15.10.1996.
2. Orders of Hon'ble High Court of Andhra Pradesh in WP No.21718 of 2022 dated 24.11.2022 & dated 05.07.2023.
3. Orders of Hon'ble High Court of Andhra Pradesh in WP No.21718 of 2022 dated 02.08.2023.

ORDER :-

The Andhra Pradesh State and Subordinate Service Rules, 1996 issued in the G.O. first read above, defined relinquishment of rights by members in Rule 28 as follows:

“any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if, in the opinion of the appointing authority such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished:

Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted”.

2. In the reference 2nd read above, the Hon’ble High Court of Andhra Pradesh has been pleased to issue the following order, dated 24.11.2022 in WP No.21718 of 2022 filed by Smt J.Radha, Lecturer in Social Science, Government General Hospital, Ananthapuramu District:

“This Court is constrained to observe that the “gross perversity” as termed by this Court could have been avoided by the Official Respondents herein if they would have suitably amended the Rule 28 of the Andhra Pradesh State and Subordinate Service Rules, 1996 in terms of the interpretation given by a Division Bench of this Hon’ble Court way back in the year 2006 (which has become final in all respects). The Respondents are directed to suitably amend Rule 28 of the Andhra Pradesh State and Subordinate Service Rules, 1996”.

3. In the order dated 09.08.2006, the Hon’ble High Court of Andhra Pradesh in WP No.26654 of 2005 filed by the District Education Officer, Kurnool and 3 others has disposed of the case with the following directions:-

The Tribunal, in its earlier order in Smt. S. Swarna Kumari Vs. Dy. Commissioner of Prohibition and Excise [1], considered the scope and implication of Rule 28 of the A.P. State & Subordinate Services Rules and held thus:

“.....A careful perusal of Rule-28, extracted above, would reveal the following:

(1) An option is given to any member of a service to relinquish any right or privilege to which he may be entitled to, under the relevant rules (this includes right or privilege of promotion).

(2) Such relinquishment is subject to acceptance of the appointing authority. Who must be satisfied before acting upon such relinquishment that such relinquishment was not opposed to public interest.

(3) Such relinquishment once made will be final and irrevocable.

(4) Once such relinquishment has come into force, the authorities concerned shall not be required to recognise any right or privilege to the extent to which it has been so relinquished.

The proviso to this Rule contemplates that conditional relinquishment or relinquishment of a right for a temporary period shall not be permitted.....

... ..Viewed in this context, a relinquishment of a right or privilege to promotion would only mean that his right to be considered for promotion, while he was occupying a particular place in the seniority list, at a time when he was eligible for promotion by virtue of passing of the tests etc., as required under the then existing rules and in respect of a vacancy, that has arisen at the relevant time has been relinquished. This relinquishment may be permanent.

It is true that conditional relinquishment is not permissible. What is meant is that in respect of that particular opportunity for promotion a member of a service cannot relinquish with a rider that he would claim that privilege of promotion on that happening of certain contingency. For example, if a member of a service has relinquished his right or privilege of promotion on the ground of his sickness, he cannot be allowed to claim that offers of promotion may be revived after he is cured of his sickness.

Similarly, the provision that he cannot be permitted to relinquish temporarily would mean that in respect of a particular opportunity for promotion, the employee cannot be allowed to claim that the offer of promotion may be kept open for him for a particular period.

The real question is what privilege or right has been relinquished ?

This assumes significance in view of the language used in Rule-28 of the state and Subordinate Service Rules which is to the following effect:

"Nothing contained in these rules or the special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished."

This would indicate that the authorities concerned are not required to recognise any right or privilege of a member of a service to the extent to which it has been so relinquished. The words "to the extent to which it has been so relinquished" appears significant.

So, the question, therefore, is where a member of a service, who had a privilege or a right to be considered for promotion, at a particular stage, has relinquished his right, the relinquishment has to be interpreted in the background of what has been stated above that a privilege or right of promotion depends on concatenation of several circumstances. **The extent of**

relinquishment has to be determined in the context of that particular occasion when the right or privilege for promotion had arisen for a member of a service. The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list in the year 2001, in view of a vacancy that arose then, in view of the fact that she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy which was available to her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also.

The learned Government Pleader seeks to contend that such an interpretation would render the provision in the Rule that such relinquishment will be permanent nugatory. We are unable to accept this contention.

As far as that particular vacancy is concerned, the employee's relinquishment is final. He cannot claim later that he may be deemed to have been promoted to that particular vacancy and that his seniority may be fixed as if he was promoted to that vacancy. Accepting such interpretation would mean that if a member of service, who has relinquished his promotion, at one stage, is promoted subsequently when another vacancy arose, he will be junior to a person, who inspite of being junior to this member, was promoted to the vacancy relinquished by him in the promotion post.

In the light of the above discussion, we have no hesitation in holding that relinquishment of right or privilege of promotion to a particular vacancy would amount to permanent relinquishment of right of privilege for promotion to that particular vacancy. The Rule-28 of the State and Subordinate Service Rules cannot be read or interpreted to mean that his right to be considered for promotion to any vacancy arising in future also is permanently extinguished. Such an interpretation would lead to frustration and unrest in the service defeating the object of promoting efficiency and harmonious functioning... .." (emphasis supplied)

We are in complete agreement with and record our approval of the interpretation placed by the Tribunal, in O.A.No. 715 of 2004 dated 23.03.2004, on Rule 28 of the A.P. State and Subordinate Service Rules.

In this context, it also necessary to take note of Rule 11(b) of the A.P. State and Subordinate Rules which prescribes the time for a person appointed to a post, otherwise than by direct recruitment, to join the said post. Rule 11(b) reads as under:

“(b) Time to join a post on appointment otherwise than by direct recruitment:- A person appointed to a post, otherwise than by direct recruitment, shall be allowed joining time of 15 (fifteen) days from the date of receipt of the order of appointment sent to the candidate by Registered Post with acknowledgement due or by any other means. If a person fails to join the post within the stipulated period of 15(fifteen) days or evades to join the post by proceeding on leave, the offer of appointment shall be treated as automatically cancelled and the name of the candidate shall be deemed to have been omitted from the list of the approved candidates and she/he shall forfeit his right of appointment both for the present and in future for the post.”

Rule 11 (b), as amended by G.O.Ms.No.123 dated 14.03.2001 with effect from 19.12.2000, specifically provides that if a person fails to join the post within the stipulated period of fifteen days or evades to join the post, the offer of appointment shall be treated as automatically cancelled, the name of the candidate shall be deemed to have been omitted from the list of approved candidates and that she/he shall forfeit his right of appointment both for the present and in future for the post. Rule 11(b), as it then was, provided that failure to join the promoted post within the stipulated time would result in forfeiture of the person's right for appointment both for the present and in the future. Unlike Rule 11(b), as inserted by G.O.Ms.No.123 dated 14.03.2001, Rule 28, which was in existence even prior thereto, does not specifically provide for forfeiture of future consideration for promotion. Relinquishment of promotion in 1977 will only disentitle the respondent-applicant from claiming promotion to the post which was filled up by way of promotion in the year 1977 and it is not open for her thereafter to seek withdrawal of her relinquishment or to contend that despite her relinquishment, she should have been considered for promotion to the said post. Rule 28 does not prohibit consideration of the respondent-applicant's case for promotion forever, for a right to be considered for promotion, if an employee is otherwise eligible, is a fundamental right under Article 16(1) of the Constitution of India. (**Ajit Singh II Vs. State of Punjab** [2] and **Delhi Jal Board Vs. Mahinder Singh** [3]). It is also well settled that fundamental rights cannot be waived (**Olga Tellis Vs. Bombay Municipal Corporation** [4]).

While the respondent-applicant did not specifically waive her right to be considered for promotion, no such waiver can be said to have been made by necessary implication either. Rule 28 does not disentitle a member of a service from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right under the Rules for promotion earlier. While the submission of the learned Government Pleader that the Tribunal had not examined the scope and purport of Rule 28 may indeed be true, on a reading of Rule 28, we do not find any reason to take a view different from the one taken by the Tribunal. The jurisdiction of this Court under Article 226 of the Constitution of India is supervisory and not appellate. We are satisfied that the conclusion of the Tribunal and the relief granted by it is not contrary to law. We see no reason, therefore, to exercise our discretionary jurisdiction

under Article 226 of the Constitution of India to interfere with the order of the Tribunal.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

4. In the order 3rd read above, the Hon'ble High Court of Andhra Pradesh is pleased to direct the Principal Secretary of Department of Law and the Principal Secretary of Department of General Administration to file affidavits as regards the 'action taken' in the matter.

5. Government after careful examination of the matter and in compliance with the directions of the Hon'ble High Court of Andhra Pradesh have decided to amend Rule 28 of Andhra Pradesh State and Subordinate Service Rules, 1996 suitably. Accordingly, the following notification will be published in the Andhra Pradesh Gazette;

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of Constitution of India and of all other powers hereunto enabling, the Governor of Andhra Pradesh hereby makes the following amendment to the Andhra Pradesh State and Subordinate Service Rules, 1996 issued in G.O.Ms.No.436, General Administration (Services-D) Department, dated the 15th October, 1996 as subsequently amended from time to time:

AMENDMENT

In the said rules, in Rule-28, after the proviso, the following shall be added namely:-

Explanation: (i) In respect of promotion to a member of service, who has exercised relinquishment of promotion due to any reason, Rule 28 does not disentitle him/her from being considered for promotion in a future vacancy merely because he/she had relinquished his/her right under the Rules for promotion earlier.

(ii) Relinquishment of right or privilege of promotion to a particular vacancy would not amount to permanent relinquishment of right of privilege for promotion to that particular vacancy. The Rule-28 cannot be read or interpreted to mean that his/her right to be considered for promotion to any vacancy arising in future also is permanently extinguished.

(iii) The relinquishment of an opportunity for promotion, which arose for an employee occupying certain place in seniority list in the panel year, in view of a vacancy that arose then, in view of the fact that he/she was eligible for promotion in the light of the criteria laid down in the Rules, would mean that the extent the privilege has been relinquished is confined to the privilege related to that particular vacancy/panel year which was available to him/her by virtue of the above mentioned circumstances. The Rule cannot be interpreted to mean that the relinquishment was in respect of future vacancies also. Therefore, the right of the Member of Service shall be considered in future vacancy for promotion, if otherwise eligible.

6. A copy of this order is available in online and can be accessed at <https://apegazette.cgg.gov.in>

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**Dr. K.S. JAWAHAR REDDY
CHIEF SECRETARY TO GOVERNMENT**

To

The Commissioner of Printing, Stationery and Stores Purchase, AP, Vijayawada
(with a request to publish and supply 50 copies to Government).

All the Departments in A.P. Secretariat.

All the Heads of Departments.

The Special Government Pleader, Office of Learned Advocate General,
Andhra Pradesh High Court Buildings, Amaravati.

The Registrar General, A.P.High Court, Amaravati (with a covering letter).

The Secretary, Andhra Pradesh Public Service Commission, Vijayawada.

All District Collectors.

All District Judges.

All Service Sections in the General Administration Department.

The Law Department.

The Finance Department.

The Health, Medical and Family Welfare Department.

The School Education Department.

The Administrative Officer, Government Pleaders Office,
A.P.High Court, Amaravati.

Copy to:

The P.S. to Special Chief Secretary to Chief Minister.

The P.S. to Chief Secretary to Government.

The P.S. to Secretary to Government (Services & HRM).

Sf/Sc (2153009).